184 (2)

No. 10-836

Supreme Court, U.S.
FILED
MAR 28 2011
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

PAUL TIEN,

Petitioner,

v.

MING TIEN, AMERICAN UNIVERSITY OF THE CARIBBEAN, AMERICAN UNIVERSITY OF THE CARIBBEAN, N.V., THE AMERICAN UNIVERSITY OF THE CARIBBEAN SCHOOL OF MEDICINE, MEDICAL EDUCATION INFORMATION OFFICE, INC., AND MEDICAL EDUCATION SERVICES, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF FLORIDA THIRD DISTRICT

BRIEF IN OPPOSITION FOR RESPONDENT MING TIEN

ROGER SLADE, ESQ.
Counsel of Record
PATHMAN LEWIS, LLP
Attorneys for Respondent Ming Tien
One Biscayne Tower, Suite 2400
Two South Biscayne Boulevard
Miami, Florida 33131
(305) 379-2425
rslade@pathmanlewis.com

235469

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

1. May a litigant obtain certiorari review in the United States Supreme Court when there is no conflict between the circuits and there are no important federal questions involved.

2. Whether a Defendant in a state law matrimonial case, who resides outside of the United States, may raise issues regarding the proper law to be applied to service of process when those issues were never raised either in the Trial Court, or on appeal.

3. Whether the Trial Court was required to find that the Hague Convention applied to service of process upon a resident in Taiwan when Taiwan was not a party to the Hague Convention.

4. Whether issues regarding Taiwan's sovereignty and whether Taiwan is bound by treaties signed by the People's Republic of China should be left to the executive branch to determine under the political question doctrine.

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	ii
TABLE OF CITED AUTHORITIES	iv
RESPONDENT MING TIEN'S OPPOSITION TO PAUL TIEN'S PETITION FOR A WRIT OF CERTIORARI	1
OPINIONS BELOW	1
JURISDICTION	1
STATUTES INVOLVED	2
STATEMENT OF THE CASE	2
A. Factual Background	2
B. Proceedings Below	4
C. Related Proceedings	6
REASONS FOR DENYING THIS PETITION	6
I. ISSUES REGARDING WHETHER THE HAGUE CONVENTION APPLIES, WHETHER TAIWAN IS A SOVEREIGN STATE, OR WHETHER TAIWAN'S SOVEREIGNTY IS JUSTICIABLE HAVE BEEN WAIVED BOTH IN THE TRIAL COURT AND ON APPEAL	11

Table of Contents

Page

II. THE PETITION FOR CERTIORARI IS PROCEDURALLY IMPROPER AND THIS COURT HAS NO JURISDICTION 13

III. THE HAGUE CONVENTION DOES NOT APPLY TO THE FACTS OF THIS CASE 15

IV. THE COURTS ARE NOT SPLIT ON WHETHER A MULTI-LATERAL TREATY THAT IS NOT RATIFIED BY TAIWAN NONETHELESS APPLIES TO TAIWAN AND WHETHER THE ISSUE IS JUSTICIABLE 17

a. The Circuits Are Not Split on Whether Taiwanese Sovereignty Is Justiciable . 17

b. The Resolution of this Matter Does Not Turn on Whether Taiwan Is a Sovereign State or Whether Its Sovereignty Is Justiciable. 21

CONCLUSION 23

TABLE OF CITED AUTHORITIES

Page

CASES

767 Third Avenue Associates v. Consulate General of Socialist Federal Republic of Yugoslavia,
218 F.3d 152 (2d Cir. 2000) 18, 19

Adams v. Robertson,
520 U.S. 83 (1997) 12

Aleem v. Aleem,
947 A.2d 489 (2008) 3

Alu, Inc. v. Kupo Company, Inc.,
No. 606-CV-327ORL28DAB,
2007 WL 177836 (M.D. Fla. Jan. 19, 2007) 9, 15

Baron v. Baron,
454 So. 2d 86 (Fla. 4th DCA 1984) 2, 8, 13, 14

Cosmetech International, LLC v. Der Kwei Enterprises and Co., Ltd.,
943 F. Supp. 311 (S.D.N.Y. 1996) 16

Fuller v. General Motors Corporation,
394 So. 2d 491 (Fla. 3d DCA 1981) 2

Heath v. Alabama,
474 U.S. 82 (1985) 12

In re Schwinn Bicycle Company,
190 B.R. 599 (Bkrtcy. N.D. Ill. 1995) 9

Cited Authorities

Page

Klehr v. A.O. Smith Corporation,
521 U.S. 179 (1997) 1

Lin v. United States,
561 F.3d 502 (D.C. 2009)..... 18, 19

Ming Tai Fire & Marine Insurance Co., Ltd. v. United Parcel Service,
177 F. 3d 1142 (9th Cir. 1999)..... 17-18, 19, 20

Patrick v. Burget,
486 U.S. 94 (1988) 7

R.J. Reynolds Tobacco Co. v. Florence Kenyon,
882 So. 2d 986 (Fla. 2004) 8

Standard Microsystems Corp. v. Winbond Electronics Corporation,
179 Cal. App. 4th 868 (Courts of Appeals, 6th Dist. Cal. 2009)..... 15, 16

Stop the Beach Renourishment, Inc. v. Florida Dep't of Envtl. Prot.,
130 S. Ct. 2592 (2010) 12

TFT-LCD Anti-Trust Litigation v. Epson Electronics America, Inc.,
Nos. M 07-1827 SI, C 09-1115 SI,
2009 WL 4874872 (N.D. Cal. Oct. 6, 2009)..... 15

Cited Authorities

Page

Trueposition, Inc. v. Sunon, Inc.,
Civil Action No. 05-3023, 2006 WL 1686635
(E.D. Pa. June 14, 2006) 16

United States v. Burgess,
No. 133066, 1987 WL 39092 (N.D. Ill. Dec. 1, 1987)
..... 22

United States v. Crawley,
837 F.2d 291 (7th Cir. 1988) 20, 21

United States v. Mendenhall,
446 U.S. 544 (1980) 8

Wachovia v. Tien,
534 F. Supp. 2d 1267 (S.D. Fla. 2007)..... 2

Wengler v. Druggists Mutual Insurance Company,
446 U.S. 142 (1980) 17

Youakim v. Miller,
425 U.S. 231 (1976) 8

STATUTES

U.S. Sup. Ct. R. 10..... 6

22 U.S.C.A. §§ 3301-3316 21

Cited Authorities

	Page
FLA. CONST. Art. 5 § 3	13
FLA. R. APP. P. 9.330(d)(3)	8, 13
Fla. Stat. § 48.031	2
FLA. STAT. § 48.194	2, 16, 22

RESPONDENT MING TIEN'S OPPOSITION TO PAUL TIEN'S PETITION FOR A WRIT OF CERTIORARI

Ming Tien respectfully files her opposition to Paul Tien's ("Petitioner" and/or "Paul Tien") Petition for Writ of Certiorari ("Petition") which seeks review of the Order of the District Court of Appeal of Florida, Third District.

OPINIONS BELOW

The opinion of the Third District Court of Appeal of Florida is unpublished, and is attached to Petitioner's Appendix ("P. App.") as P. App. 1. The Order of the District Court of Appeal denying Petitioner's Petition for Rehearing *En Banc* is also unpublished.

The Order of the Circuit Court Judge of the Eleventh Judicial Circuit, in and for Miami-Dade County, Florida ("Trial Court"), is dated December 17, 2009, and is also unpublished. Copies of portions of the transcript from the hearing on Petitioner's Motion to Quash Service of Process before the Trial Court, are attached as P. App. 4.

JURISDICTION

Respondent, Ming Tien, contests the jurisdiction of this Court to entertain this Petition since there is no split in the circuits, as Petitioner has argued. *See generally Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 185 (1997) (where certiorari is granted "in light of a split of authority among the Courts of Appeals"). Petitioner appears to ground his entire argument as to why this Court has jurisdiction over

this matter upon a *twenty-seven year old* appellate opinion from the Fourth District Court of Appeal of Florida. *See Baron v. Baron*, 454 So. 2d 86 (Fla. 4th DCA 1984). Notably, *Baron* does not and cannot authorize certiorari review in this Court in the absence of a split in the circuits or the presence of an important federal question.

STATUTES INVOLVED

This Petition involves sections 48.194 and 48.031 of the Florida Statutes. The Federal Statutes and International Treaties upon which Petitioner relies are not applicable and have no relevance to this matter as explained below.

STATEMENT OF THE CASE

A. Factual Background.

Respondent denies that the Opinions in the "related proceedings" cited by Petitioner have any *res judicata* or collateral estoppel impact in this matter. Nonetheless, those Opinions do provide background. Paul Tien resided in the State of Florida with his family from approximately 1983 through 1995 before abandoning them to live in St. Maarten.[1] It is public record that Paul Tien has owned

---

1. While Petitioner makes reference to the District Court's decision in *Wachovia v. Tien*, 534 F. Supp. 2d 1267 (S.D. Fla. 2007), in connection with its statement of facts, Respondent notes that, since Petitioner was not a party to that action, it has no res judicata or collateral estoppel impact. *See, e.g., Fuller v. Gen. Motors Corp.*, 394 So. 2d 491, 491 (Fla. 3d DCA 1981) (holding that "the judicial doctrine of collateral estoppel or estoppel by judgment is totally inapplicable to this case because the [moving party] was not a party" to the action).

real property in the State of Florida which he quit claimed to his wife in order to avoid the jurisdiction of the Florida Courts. Paul Tien has established businesses in the State of Florida, including the business conducted by Respondent-Corporations who are engaged in the business of owning, operating, managing and recruiting students for a medical school in St. Maarten known as the American University of the Caribbean School of Medicine ("AUC").

While Petitioner's Petition makes reference to an alleged Taiwanese divorce, the alleged Taiwanese divorce is a nullity and has no application to this matter since Respondent has not resided in the country of Taiwan for more than fifty (50) years and is an American citizen who, at all times material hereto, resided in the State of Florida. Moreover, the alleged Taiwanese divorce addressed only the marital relationship between the parties but made no mention of dividing, equitably, the parties $800,000,000 marital estate which was accumulated as a direct result of the incorporation and success of AUC. AUC, and the entities which constitute it, were formed during the course of the marriage. The $800,000,000 in assets were also amassed during the marriage. Finally, the Taiwanese divorce, if enforced, would violate the public policy of the State of Florida because, among other things, it has deprived Respondent of her legal right to equitable distribution and alimony. *See generally Aleem v. Aleem*, 947 A.2d 489 (Md. 2008) (where foreign divorce decree offends the public policy of the state in which recognition is south, it will not be recognized by comity principles).

B. Proceedings Below.

The proceedings concerning Paul Tien's Motion to Quash Service of Process consumed approximately two (2) years in the Trial Court and were ultimately decided on December 17, 2009, when the Trial Court denied the motion. Ming Tien's demonstrative exhibit, utilized in the Trial Court, explained an elongated process of delay caused by Paul Tien and his counsel, the purpose of which was to cause Ming Tien to spend exorbitant sums of money litigating her divorce and delaying the matter interminably. A copy of the demonstrative exhibit is attached to this Opposition as Exhibit "A." As the attached chart demonstrates, despite being ordered by the Trial Court to provide Dr. Tien's home address where he was allegedly residing in Taiwan, counsel for Dr. Tien knowingly failed to provide the address. There were multiple hearings on the Motion to Quash Service of Process which took almost eight (8) hours of the Trial Court's time. Despite the obvious requirement to hold an evidentiary hearing for the Trial Court to determine whether substitute service of process was properly effectuated upon a resident in Dr. Tien's household in Taiwan, Paul Tien neither sought, nor conducted, an evidentiary hearing. Ultimately, the Trial Court ruled that Paul Tien did not meet his burden, and the motion to quash service of process was accordingly denied.

Moreover, Paul Tien did not claim in the Trial Court that the Hague Convention governed service of process in this matter. Instead, Petitioner relied upon section 48.194 of the Florida Statutes. During the argument on the motion to quash, the following colloquy took place between Paul Tien's counsel and the Court:

Mr. Lorenzen [Paul Tien's trial and appellate counsel]: With respect to serving process outside of the State, you have to depend upon Fla. Stat. 48.194. . .

* * *

Mr. Lorenzen: The statute requires that if you are going to serve process outside of the State it has to be someone that is authorized to serve process outside of the State by an officer authorized to serve process in the State where the person is served. It is 48.194. It goes on that it has to be an officer specifically appointed there.

* * *

Mr. Lorenzen: The law says that you have to do it by an authorized officer to serve process there.

Mr. Fertel [Ming Tien's trial counsel]: Is China part of the Hague Convention? We are talking China, right?

Mr. Lorenzen: No. We are talking Taiwan.

Mr. Fertel: Taiwan is part of the Hague Convention?

Mr. Lorenzen: You see?

Mr. Fertel: I am just asking the question. You are talking about that now. We have to do it [make service] by the Hague Convention?

> Mr. Lorenzen: ***No, I am not saying through the Hague Convention.*** . . .

After Paul Tien's Motion to Quash Service of Process was denied by the Trial Court, Petitioner filed an appeal to the Third District Court of Appeal. In the Third District Court of Appeal, Paul Tien did not argue that service under the Hague Convention was required, nor did he raise the question of whether Taiwan was a part of the People's Republic of China ("PRC"). After the Order of the Trial Court was affirmed with a *per curiam affirmance* by the Third District Court of Appeal of Florida, Petitioner filed a Motion for Rehearing. In his Motion for Rehearing, Paul Tien did not argue that service under the Hague Convention was required and did not raise issues relating to the relationship between the PRC and Taiwan.

C. Related Proceedings.

Ming Tien disagrees with Paul Tien's description of "related proceedings" since she believes the divorce case, pending in the Eleventh Judicial Circuit Court in and for Miami-Dade County, Florida, has no genuine relationship to litigation between and among other members of the Tien family.

REASONS FOR DENYING THIS PETITION

The Rules of the United States Supreme Court make clear that a Petition for a Writ of Certiorari should be granted only for "compelling reasons." United States Supreme Court Rule 10. The instant Petition does not present "compelling reasons" for it to be granted. Rather, it presents a compelling example of a genuine abuse of

the judicial process the purpose of which is to cause a seventy-three (73) year old woman [Respondent] to expend precious resources in litigating what is, indeed, a frivolous petition. It is, and always has been, Petitioner's goal to make Respondent spend money.

It is well settled that a Writ of Certiorari is not granted as a matter of right but is granted only utilizing sound judicial discretion. *See* United States Supreme Court Rule 10. In any event, the reasons why this Petition should be denied are straightforward.

First, despite years of litigation, Paul Tien never took the position that service was required under the Hague Convention. In fact, Paul Tien actually took the opposite position and vociferously argued that service had to be effectuated under section 48.194 of the Florida Statutes. Two (2) years of litigation was premised almost entirely upon the question of whether Ming Tien's service upon a resident in Paul Tien's home in Taiwan complied with the terms of section 48.194 of the Florida Statutes. Respondent spent substantial resources litigating this issue which was briefed numerous times over a two (2) year period and consumed substantial hearing time in excess of eight (8) hours before the Trial Court. Now, suddenly, in his Petition to this Court, Petitioner argues that section 48.194 of the Florida Statutes does not apply at all but, instead, it is the Hague Convention which applies.

A more obvious waiver is hard to imagine and, thus, this Court should deny certiorari because the question presented to this Court was not presented or litigated in the lower court. *Patrick v. Burget*, 486 U.S. 94, 99 n. 5 (1988) ("This Court usually will decline to consider questions presented in a petition for certiorari that have

not been considered by the lower court."); *Youakim v. Miller*, 425 U.S. 231, 234 (1976) (per curiam); *United States v. Mendenhall*, 446 U.S. 544, 599 (1980) (where Court refused "to reverse judgments on grounds not raised below," and holding that since the petition "addresses a fact-bound question with a totality-of-circumstances assessment that is best left in the first instance to the trial court, particularly since the question was not litigated below . . . [the Court] cannot be sure [the question presented can] adequately [be] addressed by the record before [the Court]").

Second, this Petition is procedurally improper and this Court has no jurisdiction. Petitioner appealed to the Third District Court of Appeal of Florida which affirmed the decision of the Trial Court with a *per curiam affirmance.* Petitioner then filed a Motion for Rehearing which was also denied. Pursuant to Florida law, in the absence of a written opinion, the Florida Supreme Court does not entertain further appeals. *See* FLA. R. APP. P. 9.330(d)(3); *see also R.J. Reynolds Tobacco Co. v. Florence Kenyon*, 882 So. 2d 986, 990 (Fla. 2004). Accordingly, the State of Florida has obviously made a policy decision to allow the intermediate appellate courts—the District Courts of Appeal of Florida- - to act as a Court of final resolution in circumstances where the District Courts of Appeal do not write an Opinion. There is no authority which authorizes the filing of a Petition with the United States Supreme Court in the absence of a split in the circuits relating to this matter or the involvement of an important federal question in the case. Neither is present here.

Petitioner relies upon certain *dictum* in *Baron v. Baron*, 454 So. 2d 86 (Fla. 4th DCA 1984), for the absurd

proposition that a single appellate opinion, emanating from a District Court of Appeal *twenty-seven (27) years ago,* somehow authorizes the direct filing of a Petition in this Court. Simply put, the *Baron* decision does not state what Petitioner claims it states and, even if it did, it could not possibly be good law. Certainly, the opinion of a state intermediate appellate court cannot create new grounds for appellate jurisdiction in this Court. Such a proposition would be unprecedented.

As demonstrated below, it is section 48.194 of the Florida Statutes which governs this dispute and Petitioner and Respondent cited, relied upon, and litigated that section both before the Trial Court and the Third District Court of Appeals of Florida. There is no reason for this Court to review the Trial Court proceedings to determine whether a Florida Statute was complied with. That was the job of the Trial Court Judge and the Third District Court of Appeals of Florida, both of which have confirmed that Petitioner did not meet his burden on his Motion to Quash Service of Process.

There are myriad cases throughout the federal system in which service of process in Taiwan was involved. *See infra* at Section III. The overwhelming majority of the cases do not even make reference to the Hague Convention because Taiwan is not a signatory to the Hague Convention. *Alu, Inc. v. Kupo Co., Inc.*, 6:06-CV-327ORL28DAB, 2007 WL 177836, at *3 n. 1 (M.D. Fla. Jan. 19, 2007); *see also In re Schwinn Bicycle Co.*, 190 B.R. 599, 612 (Bkrtcy.N.D.Ill.1995).

Petitioner's argument that Taiwan should somehow be forced to accept the Hague Convention, because the PRC

has signed it, also lacks any precedent. For this Court to issue such a ruling, it would not only throw United States-Taiwanese relations into turmoil, it would impinge upon the legitimate authority provided by the United States Constitution to other branches of the government to make foreign policy decisions and enter into international treaties. The idea that this Court would undertake such an exercise to resolve a service of process dispute emanating from a Florida State Court divorce case seems remote, at best.

This Court should decline the invitation to adjudicate the question of whether Taiwan sovereignty is subject to judicial review. Petitioner's efforts to invent a "split in the circuits" on this issue is unavailing for two reasons: (i) the cases upon which Petitioner relies actually agree with one another (hence, there is no "split"); and (ii) neither the Trial Court nor the Third District Court of Appeal of Florida ever authored an opinion which addresses issues of Taiwanese sovereignty or the application of the Hague Convention to Taiwan. It is unclear exactly what split in the Circuits Petitioner is referring to, particularly since there is no written opinion in this case which would create a split in the circuits. To the extent that Petitioner is asking this Court to resolve issues in other cases which have long since been decided, he is essentially asking this Court to render an advisory opinion.

Accordingly, this is the wrong occasion for this Court to undertake a resolution of this issue when none of the pending cases, which are alleged to involve a split in the circuits, relate to any issue this Petitioner brought before the lower courts. Finally, Petitioner's suggestion that, before he can be served with process, the question of Taiwan's

sovereignty must be resolved is also unprecedented and puzzling. The United States Constitution left the task to resolve the issue regarding Taiwan's sovereignty, to the two other branches of government, not the Judiciary. Moreover, this issue was never raised in the Trial Court or on appeal. Finally, granting this Petition could, potentially, open the floodgates to other petitions and appeals by foreign nationals who contest the sovereignty of their home countries. It seems unlikely that this Court will accept certiorari on this matter in light of its obvious unsuitability.

I. ISSUES REGARDING WHETHER THE HAGUE CONVENTION APPLIES, WHETHER TAIWAN IS A SOVEREIGN STATE, OR WHETHER TAIWAN'S SOVEREIGNTY IS JUSTICIABLE HAVE BEEN WAIVED BOTH IN THE TRIAL COURT AND ON APPEAL.

This is a relatively straight forward Florida matrimonial case that has been complexified by Paul Tien since he lost his Motion to Quash Service of Process in the Trial Court and on appeal. The issue regarding service of process was extensively litigated in the Trial Court and was the subject of numerous pleadings, motions and hearings. At none of those hearings did Paul Tien raise issues regarding: (i) whether service under the Hague Convention was required; (ii) whether Taiwan was a sovereign state; or (iii) whether Taiwan's sovereignty was "justiciable." In fact, when questioned during a hearing in the Trial Court on the Motion to Quash, Paul Tien's counsel specifically disclaimed any reliance upon the Hague Convention and, instead, emphasized that Paul Tien was relying exclusively upon section 48.194 of the

Florida Statutes. *See supra* at Section B. Thus, Paul Tien has waived his right to make any argument regarding the Hague Convention, Taiwan sovereignty, or whether Taiwan sovereignty is justiciable in this Court. *See, e.g., Stop the Beach Renourishment, Inc. v. Florida Dep't of Envtl. Prot.*, 130 S. Ct. 2592, 2610 n. 11 (2010) ("Petitioner did not raise this challenge before the Florida Supreme Court, and only obliquely raised it in the petition for certiorari. We therefore do not reach it.").

It is well settled that claims not properly presented to this Court will not be reviewed. *See Adams v. Robertson*, 520 U.S. 83, 86 (1997) ("We will not consider a Petitioner's federal claim unless it was either addressed by, or properly presented to, the State Court that rendered the decision we have been asked to review."); *Heath v. Alabama*, 474 U.S. 82, 87 (1985) ("We decline to decide the issue because Petitioner did not claim lack of jurisdiction in his Petition to the Alabama Supreme Court and he raised the claims for the first time in his Petition to this Court.").

Accordingly, there has been a knowing and clear waiver of these issues and this Court should not address them in connection with this Petition. Such a ruling would do violence to the waiver rules, would cause Respondent to expend substantial resources in attorney's fees and would permit litigants to dance from one foot to the other while they try on whatever argument suits them. Paul Tien decided in the Trial Court to rely upon section 48.194 of the Florida Statutes and, having lost that argument, it is too late for him to change it now in his Petition.

II. THE PETITION FOR CERTIORARI IS PROCEDURALLY IMPROPER AND THIS COURT HAS NO JURISDICTION.

The Florida Courts have enacted rules governing appeals which clearly determine the methods in which an Appellant may seek review in the Supreme Court of Florida. *See generally* FL CONST Art. 5 § 3. Those rules require that, before appellate review is warranted by the Supreme Court of Florida, the intermediate appellate court—the District Courts of Appeal—must issue a written opinion. FLA. R. APP. P. 9.330(d)(3). In this case, the intermediate appellate court—the Third District Court of Appeal—declined, on two (2) occasions, to write an opinion. The Third District Court of Appeal of Florida affirmed the decision of the Trial Court with a *per curiam affirmance.* It then denied Petitioner's Motion for Rehearing and Motion for Written Opinion *En Banc* with a single word: "Denied." Thus, under Florida law, Petitioner has no further remedies in the Florida Courts.

Petitioner has cited no case law which authorizes his current Petition to the United States Supreme Court. Petitioner has not asserted that any of his rights under the United States Constitution have been violated. He has not filed a Petition for Habeas Corpus. Instead, he is simply seeking another bite at the apple by manufacturing a phony circuit split joined with his tortured reading of a twenty-seven (27) year old opinion which has never been used or interpreted to say what Petitioner argues it states.

A preliminary review of *Baron v. Baron*, 454 So. 2d 86 (Fla. 4th DCA 1984), reflects that the Fourth District Court of Appeal of Florida determined that, under

the Full Faith and Credit Clause of the United States Constitution, the District Court of Appeal should have accorded *res judicata* effect to a New Hampshire divorce decree entered prior to the Final Judgment in Florida, where the husband did not attempt to appeal the New Hampshire Court's determination of jurisdiction. In *Baron*, the Fourth District Court of Appeal recognized the *constitutional issue* raised by the implications of the Full Faith and Credit Clause and stated, *in dictum*, that "[a]n aggrieved Defendant must seek reversal in an appellate court of the state involved or, if he is unsuccessful there, in the Supreme Court of the United States." *Id.* at 87. The *Baron* Court was simply reiterating the known principle that if the Supreme Court of Florida ultimately ruled upon the issue, and there were constitutional implications, the Appellant could seek review in the United States Supreme Court. The *Baron* Court did not opine that, as a matter of procedure, an Appellant could go directly to the United States Supreme Court and circumvent the Florida Constitution and appellate rules applicable. In this case, the procedural path provided by Florida law in Florida courts has been exhausted. Florida Courts have repeatedly determined that this matter, at least as far as service of process is concerned, has reached its end.

Respondent actually agrees with Petitioner that "*Baron* misconstrues the relationship between the State and Federal Court systems in the nature of certiorari review by this Court." Petitioner's Brief at p. 25. To the extent that Petitioner attempts to bootstrap the *Baron* decision, into an avenue allowing for relief in this Court, Petitioner also misconstrues the relationship between the State and Federal Court systems and the nature of certiorari review by this Court. It would be unprecedented

to allow a state appellate court to dictate the proper appellate avenues for a party to take which would include review in this Court. This would directly contravene the United States Constitution. Simply put, it is not the lack of appellate review by the United States Supreme Court that is preventing Petitioner from continuing to litigate the service of process issue; it is the Florida Rules of Appellate Procedure which dictate that Petitioner's review path has ended.

III. THE HAGUE CONVENTION DOES NOT APPLY TO THE FACTS OF THIS CASE.

As previously demonstrated, Petitioner has knowingly and repeatedly waived any argument that the Hague Convention applies to this dispute. Nonetheless, there are myriad cases in the federal system in which service of process in Taiwan has been at issue. Not one of those cases has raised the Hague Convention as an issue. *See, e.g., Standard Microsystems Corp. v. Winbond Elecs. Corp.*, 179 Cal. App. 4th 868, 897 (6th Dist. 2009) (holding that because Taiwan is not a signatory to the Hague Convention, the Defendants can be served by any method conforming to California law); *see also TFT-LCD Anti-Trust Litigation v. Epson Elecs. Am., Inc.*, Nos. M 07-1827 SI, C 09-1115 SI, 2009 WL 4874872 (N.D. Cal. Oct. 6, 2009) (recognizing that service of process in Taiwan cannot be made through the Hague Convention because Taiwan is not a party to the Hague Convention); *Alu, Inc. v. Kupo Co., Inc.*, No. 6:06-CV-327ORL28DAB, 2007 WL 177836 (Md. Fla. Jan. 19, 2007) (recognizing that Taiwan is not a signatory to the Hague Convention and *also* recognizing that reasonable notice and an opportunity to be heard must be satisfied in order for due process to occur);

Cosmetech Int'l, LLC v. Der Kwei Enters. & Co., Ltd., 943 F. Supp. 311 (S.D. N.Y. 1996) (finding that Taiwan was not a party to the Hague Convention and service of process upon a Taiwanese corporation was proper under Taiwan law where service was made upon the corporation's officer and managing agent); *Trueposition, Inc. v. Sunon, Inc.*, Civil Action No. 05-3023, 2006 WL 1686635 (E.D. Pa. June 14, 2006) (recognizing that service by international mail is sufficient).

Accordingly, it is clear that, in federal case law, the cases *do not* require service in Taiwan under the Hague Convention. In fact, the opposite appears to be true and the majority of the cases recognize that, since Taiwan is not a signatory to the Hague Convention, service under the Hague Convention is not only not necessary it is, indeed, improper. This is obviously the reason why this argument was not raised in the Trial Court because then, and now, it makes no sense. The *Standard Microsystems* case makes clear that, because Taiwan is not a signatory to the Hague Convention, service under California law was proper. This is precisely the situation we have here.

Petitioner allegedly resided in Taiwan during the time in which Respondent attempted to make service upon him. Taiwan was not a signatory to the Hague Convention at the time and is not a signatory to it now. Accordingly, Respondent correctly effectuated service of process pursuant to section 48.194 of the Florida Statutes which provides that "[e]xcept as otherwise provided herein, service of process on persons outside of the state shall be made in the same manner as service within the state by any officer authorized to serve process in the state where the person is served. No order of court is required."

Respondent followed this procedure. She recognized that, since Taiwan is not a signatory to the Hague Convention, she was required to make service under Florida law. Two Courts –the Circuit Court for the Eleventh Judicial Circuit in and for Miami-Dade County, Florida and the Third District Court of Appeals of Florida, have affirmed that service of process was properly made under Florida law. Generally, the state courts are accorded deference by the United States Supreme Court in interpreting state law. *See, e.g., Wengler v. Druggists Mut. Ins. Co.*, 446 U.S. 142, 152-53 (1980) (holding that "[b]ecause state legislation is at issue, and because a remedial outcome consonant with the state legislature's overall purpose is preferable, we believe that state judges are better positioned to choose an appropriate method of remedying the . . . violation"). Accordingly, a Florida Court's interpretation of its own law should not be disturbed on appeal and should be given a greater weight by this Court than Petitioner's manufactured arguments.

IV. THE COURTS ARE NOT SPLIT ON WHETHER A MULTI-LATERAL TREATY THAT IS NOT RATIFIED BY TAIWAN NONETHELESS APPLIES TO TAIWAN AND WHETHER THE ISSUE IS JUSTICIABLE.

a. The Circuits Are Not Split on Whether Taiwanese Sovereignty Is Justiciable.

Petitioner takes great liberties with the case law when he asserts that there is a "split in the circuits" regarding whether Taiwanese sovereignty is justiciable. Petitioner cites three (3) cases to establish the alleged split: (i) *Ming Tai Fire & Marine Insurance Co., Ltd. v. United Parcel*

Service, 177 F.3d 1142 (9th Cir. 1999); (ii) *767 Third Avenue Associates v. Consulate General of Socialist Federal Republic of Yugoslavia*, 218 F.3d 152 (2d Cir. 2000); (iii) *Lin v. United States*, 561 F.3d 502 (D.C. 2009). The problem with Petitioner's argument is that these three (3) cases do not hold what he states and, instead, support precisely Respondent's position.

Ming Tai involved a case in which an insurer of a package sued an air carrier and alleged a loss of cargo under the Warsaw Convention. The District Court for the Northern District of California held that the Warsaw Convention did not apply to a shipment from Taiwan because Taiwan was not a signatory to the Warsaw Convention and that the air carrier's liability was therefore limited to the $100 release value provided by the airway bill. The Ninth Circuit affirmed and held further that it would recognize and defer to the political department's position that Taiwan is not bound by China's adherence to the Warsaw Convention.

In analyzing the application of the Warsaw Convention to the facts, the *Ming Tai* Court made the following cogent observation:

> The determination of whether China's adherence to the Convention binds Taiwan conflates two distinct areas of foreign relations: the effects of foreign sovereign recognition, and the status of treaties. ***It is axiomatic that the conduct of foreign relations is committed by the Constitution to the political departments of the Federal Government; [and] that the propriety of the exercise of that power is not open to judicial review.***

Ming Tai Fire & Marine Insurance Co., Ltd., 177 F.3d at 1144-45 (emphasis added).

The Ninth Circuit recognized that "despite the absence of official relations, the United States continues to deal separately with Taiwan. But in the passage of the [Taiwan Relations] Act, the United States finally committed and enforced its treaties with Taiwan that antedated derecognition; it also gave no indication that existing or future agreements with the newly recognized China would be binding upon Taiwan." *Id.* at 1146. The *Ming Tai* Court further found as follows:

> While *Ming Tai* argues that the District Court violated separation of powers by rejecting its position, **it instead would be an intrusion into the political sphere for this Court to rule in *Ming Tai's* favor and effectively to hold, contrary to every indication of executive and legislative intent, that Taiwan has tacitly been recognized by the United States as a party to any treaty signed by China. We will not do so.** We caution, however, that we do not independently determine the status of Taiwan; instead, we merely recognize and defer to the political department's position that Taiwan is not bound by China's adherence to the Warsaw Convention.

Id. at 1147 (emphasis added). Significantly, the Court in *767 Third Avenue* and *Lin* held precisely the same thing. *See, e.g., 767 Third Ave. Assocs.*, 218 F. 3d at 152 (claims by New York landlord against Former Republic of Yugoslavia which had since been dissolved presented political questions which federal court was not competent

to decide); *Lin*, 561 F. 3d at 502 (political question doctrine barred district court from considering action brought by residents of Taiwan asserting that they were nationals of the United States; suit raised policy questions that were textually committed to coordinates branches of government). Accordingly, there is no split among the circuits. Even a brief review of the foregoing precedent reveals that Petitioner's claim that there is a "split" in the circuits is manufactured since there is an agreement between the circuits that the determination of the political status of Taiwan, or any country for that matter, is not a question for the Judiciary.

Petitioner distorts the Court's holding in *Ming Tai* to create the appearance of a split in the circuits. In so doing, Petitioner asserts as follows: "[t]he Court cautioned that [sic] was merely deferring to the position of the Executive Branch in a District Court Amicus Brief that Taiwan is not to be bound by China's adherence to the Warsaw Convention. Deference, however, is an aspect of adjudication and as such, presupposes jurisdiction and justiciability. The Court's actions did not mirror its words." Petitioner's Petition at p. 13.

More accurately, it is Petitioner's words that do not mirror the *Ming Tai* Court's ruling. Petitioner's claim that "deference. . . is an aspect of adjudication" is a form of syllogistic nonsense. Deference is not an aspect of adjudication. Deference is Deference. Adjudication is Adjudication. Deference does not "presuppose" jurisdiction and justiciability. Jurisdiction and justiciability in *Ming Tai* were explicitly rejected by the Court. To the extent that the "Court's action did not mirror its words" this is what lawyers call "dictum." *See, e.g., United States v.*

Crawley, 837 F.2d 291, 292 (7th Cir. 1988) (defining *dictum* as a "passage [that] was unnecessary to the outcome of the earlier case and therefore perhaps not as fully considered as it would have been if it were essential to the outcome"). Petitioner may not rely upon *dictum* to fabricate a split in the circuits. *Id.* (holding that the passage found to be dictum "was not a fully measured judicial pronouncement, it was not likely to be relied on by readers, and indeed it may not have been part of the decision that resolved the case or controversy on which the court's jurisdiction depended (if a federal court).").

b. The Resolution of this Matter Does Not Turn on Whether Taiwan Is a Sovereign State or Whether Its Sovereignty Is Justiciable.

The PRC and Taiwan are two separate countries as reflected by the Taiwan Relations Act. 22 U.S.C.A. §§ 3301-3316 (2010). There is no authority for the proposition that Taiwan is a province of the PRC and, therefore, bound by its treaties. It would be inappropriate to burden Taiwan with treaties which it did not sign. Of course, Taiwan is not even involved in this litigation—the Petitioner is simply an alleged Taiwanese national who is involved in a Florida divorce. The Court should decline the opportunity to accept certiorari in this matter because of the obvious political ramifications if the Court intervened in a dispute between two individuals involved in a Florida divorce.

This case does not turn on foreign policy. Foreign policy is not implicated by a domestic relations case. Petitioner can cite no cases which say that service of process on a foreign national has ever implicated foreign policy. Petitioner makes an argument that the law

governing service of process on a Taiwanese national is either "unknown" or "unknowable." Such a concept, preposterous on its face, defies due process which certainly requires that citizens of the United States be able to determine what its laws are so that they can act accordingly. *United States v. Burgess*, No. 133066, 1987 WL 39092 (N.D. Ill. Dec. 1, 1987) ("the term "law" itself, as used in the Constitution, embodies the principle that laws must be made known to those who are required to obey them.").

Petitioner's tortured interpretation of the law, which suits its own ends and which has been asserted at the eleventh hour, stands the law on its head in order to create a black hole from which no one can emerge. Petitioner simply did not like the outcome of the Motion to Quash Service in the Trial Court and on appeal and has, thereafter, sought to rewrite history by raising arguments never raised before and making claims (such as the invocation of treaties) which have no conceivable relevance to this matter. Simply put, the proper law has not been "posted on high in the columns," as Petitioner alleges; rather, it is stated simply and directly in section 48.194 of the Florida Statutes, the law that everyone in this case was following until the filing of the Petition.

The obvious absurdity of Petitioner's position in this case has been amply highlighted in this brief, is obviously an abuse of the judicial process, and should be subject to the appropriate sanctions. This Court should see clearly that Petitioner's proposed interpretation of the law would create a vacuum and would make it impossible to ever serve process upon a Taiwanese national without first determining whether Taiwan is a sovereign state,

whether the PRC's adoption of the Hague Convention applies to it, and whether the matter involves political questions. Such an intense rigmarole as a precondition to service of process would make service of process upon foreign nationals impossible—precisely the outcome which Petitioner is seeking so that he could avoid liability to his wife and escape with his $800,000,000 fortune untouched. This Court should decline to provide Petitioner assistance in that regard and deny this Petition.

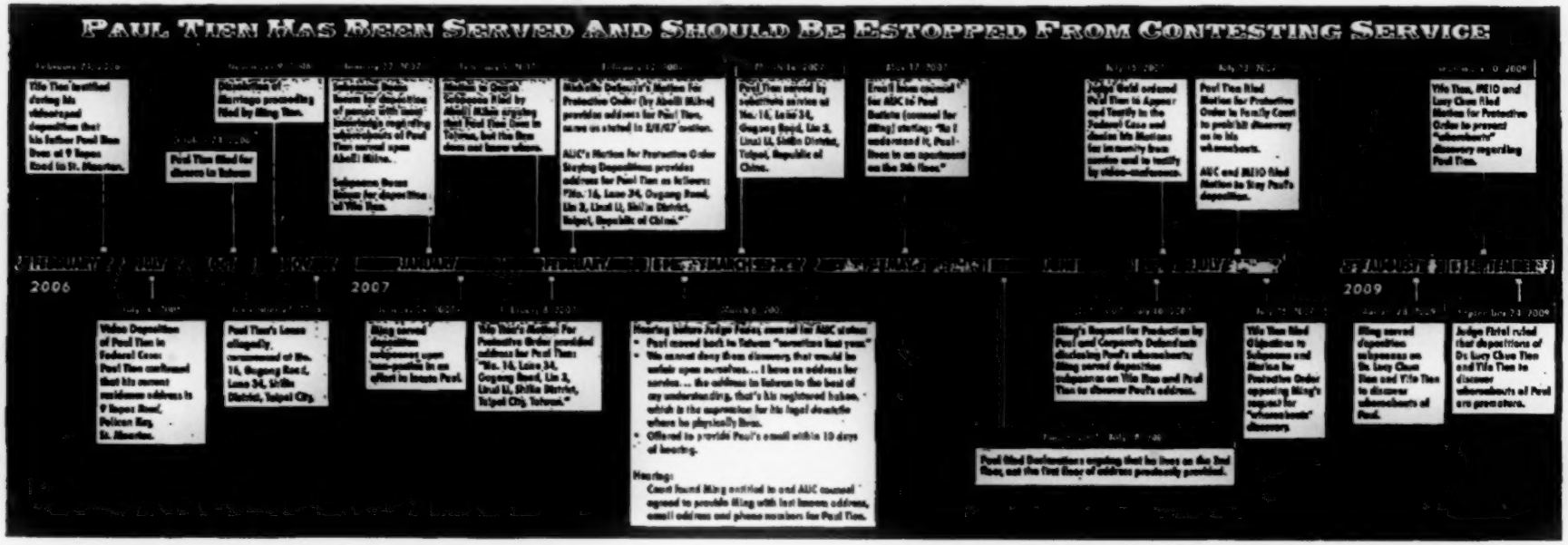
CONCLUSION

For the foregoing reasons, this Petition should be denied and Respondent, Ming Tien, should be awarded costs and attorneys' fees together with any other and further relief which this Court deems just and proper.

Respectfully submitted,

ROGER SLADE, ESQ.
Counsel of Record
PATHMAN LEWIS, LLP
Attorneys for Respondent Ming Tien
One Biscayne Tower, Suite 2400
Two South Biscayne Boulevard
Miami, Florida 33131
(305) 379-2425
rslade@pathmanlewis.com

APPENDIX


PAUL TSEN HAS BEEN SERVED AND SHOULD BE ESTOPPED FROM CONTESTING SERVICE
Yifa Tien testified during his videotaped deposition that his father Paul Tien lives at 9 Bayou Road in St. Maarten.
Paul Tien filed for divorce in Taiwan
Yifa Tien's Lease allegedly commenced at No. 14, Guguang Road, Lane 34, Shilin District, Taipei City.
Video Deposition of Paul Tien in Federal Case: Paul Tien confirmed that his current residence address is 9 Bayou Road, Pelican Key, St. Maarten.
2006
2007
2009
Ming served deposition subpoenas upon Lucy Chow Tien and Yifa Tien to discover whereabouts of Paul.
Judge Fitzel ruled that depositions of Dr. Lucy Chow Tien and Yifa Tien to discover whereabouts of Paul are premature.

BEST AVAILABLE COPY